

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIE BAILEY, III,

Plaintiff,

No. CIV S-04-2067 GEB EFB P

vs.

J. WEDELL, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On December 4, 2008, plaintiff filed three separate documents containing four requests. For the reasons stated below, each of those requests is denied.

First, plaintiff requests that the court schedule a pretrial conference and a trial date. *See* Docket No. 79. The request is unnecessary. Pursuant to the July 5, 2007 scheduling order, pretrial proceedings, if necessary, will be scheduled upon the resolution of any pretrial motions filed. Defendants' motions for summary judgment are currently pending. Accordingly, plaintiff's motion is denied.

Second, in the same filing plaintiff requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may

1 request counsel voluntarily to represent such a plaintiff. 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*,
2 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
3 The court finds that there are no exceptional circumstances in this case.

4 Third, plaintiff has also filed motions in limine seeking to exclude from trial evidence of his
5 prior convictions and his prison disciplinary record. *See* Docket No. 80. Additionally, plaintiff
6 seeks an order allowing him to appear during trial free from restraints and in his personal clothing.
7 *Id.* If and when a pretrial order issues later in these proceedings, a briefing schedule will be set with
8 respect to motions in limine. Additionally, if the matter proceeds to trial the court will hold a trial
9 confirmation hearing to address how the trial will be conducted. At that time plaintiff may renew
10 his request regarding restraints and civilian clothing. At this time these motions are premature.
11 Accordingly, plaintiff's motions are denied without prejudice.

12 Finally, plaintiff requests a writ of habeas corpus ad testificandum. *See* Docket No. 81. As
13 noted, a trial is not yet scheduled in this action. If a trial is scheduled, the court will, not later than
14 six weeks before trial, issue a writ to provide for plaintiff's attendance. Thus, the request is denied
15 as unnecessary.

16 Accordingly, IT IS HEREBY ORDERED that plaintiff's December 4, 2008, requests
17 (Docket Nos. 79, 80, 81) are denied.

18 DATED: December 31, 2008.

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20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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